

These are the tentative rulings for civil law and motion matters set for Thursday, October 10, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 9, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0056904 Stepp, John vs. Beagles, Gerry, et al

Plaintiff's Motion to Compel Responses to Form Interrogatories

The unopposed motion is granted. Defendant Gerry Beagles shall provided verified responses, without objections, to form interrogatories, set one on or before October 18, 2013.

Sanctions are denied because the motion was not opposed. (CCP§2030.290(c).) However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

Plaintiff's Motion to Compel Responses to Request for Production of Documents

The unopposed motion is granted. Defendant Gerry Beagles shall provided verified responses and responsive documents, without objections, to request for production of documents, set one on or before October 18, 2013.

Sanctions are denied because the motion was not opposed. (CCP§2031.300(c).) However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

2. S-CV-0028347 Wells, Glen S. vs. Welco Engineering, Inc.

The motion to vacate stay and set trial dates is dropped from the calendar as no moving papers were filed with the court.

3. S-CV-0030882 Ace Body Shop & Towing, et al vs. City of Lincoln, Calif.

Defendant's Motion for Terminating and Monetary Sanctions is continued, on the court's own motion, to October 17, 2013 at 8:30 a.m. in Department 40 to be heard in conjunction with the Motion for Protective Order.

4. S-CV-0033036 Leopold, Eric vs. Ford Motor Company

Defendant's Motion to Strike, or in the Alternative, Demurrer to the First Amended Complaint

Preliminary Matters

The court notes that the motion is primarily referred to as one to strike the first amended complaint (FAC). The substance of the motion challenges the FAC in a manner that is properly characterized as a demurrer. Therefore, the court shall rule as to the alternative relief sought in defendant's moving papers.

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted solely as to Exhibit A pursuant to Evidence Code section 452. Defendant's request is denied as to Exhibits B through J.

Ruling on Demurrer

The demurrer is sustained with leave to amend. A party may demurrer a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) "A demurrer based on a statute of limitations is appropriate if the ground appears on the face of the complaint or from matters of which the court may or must take judicial notice." (*Aaronoff v. Martinez-Sefiner* (2006) 136 Cal.App.4th 910, 918.)

The FAC fails to sufficiently plead facts regarding the delayed discovery rule. A plaintiff that relies upon the delayed discovery rule must plead the specific facts showing (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797,

808.) The general terms pled in the FAC are insufficient to show the time and manner of discovery. Based upon the foregoing, the demurrer is sustained with leave to amend.

The second amended complaint shall be filed and served on or before October 31, 2013.

Defendant's request for telephonic appearance is granted. The party is informed that it must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

5. S-CV-0033048 Ruddel Corporation vs. Malone, Dave, et al

Defendant's Demurrer to the Complaint is continued, on the court's own motion, to November 7, 2013 at 8:30 a.m. in Department 40. The court is informed that plaintiff will be filing a first amended complaint.

6. S-CV-0033604 King, Cynthia, et al vs. Rocklin Unified School District

The appearance of the parties is required on the Petition to Approve Minor's Compromise. The appearance of the minor at the hearing is waived. Petitioner has not filed for an application to be appointed guardian ad litem in this matter. The court also seeks further information regarding the \$2,000.00 lost wages payment that will be made to petitioner.

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